Supreme Court, U.S.
FILED
AUG 15 2000
CLERK

(3)

No. 99-2084

In The

Supreme Court of the United States

THE CITY OF LOS ANGELES,

Petitioner,

v.

SYED MOUZZAM ALI,

Respondent.

On Petition For A Writ Of Certiorari To The California Court Of Appeal

REPLY TO BRIEF IN OPPOSITION

JAMES K. HAHN, City Attorney
CLAUDIA MCGEE HENRY,
Senior Assistant City Attorney
Counsel of Record
MICHAEL L. KLEKNER,
Deputy City Attorney
1800 City Hall East
200 N. Main Street
Los Angeles, California 90012
(213) 485-5419

Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

6PP

I

THE RECORD IN THIS CASE SHOWS THAT THE PRESENT FEDERAL ISSUES WERE DECIDED BY THE CALIFORNIA COURTS

Despite Respondent's argument to the contrary, jurisdiction is conferred upon the United States Supreme Court to review the federal questions presented in the within Petition for Writ of Certiorari pursuant to 28 U.S.C.A. § 1257(a).

In the present case, it is eminently clear that the California Court of Appeal decided a federal question in determining that there had been a temporary regulatory taking for which just compensation must be paid.

Citing decisions of this court, the trial judge, California Superior Court Judge Crispo, found that there had been a regulatory taking for which just compensation must be paid. He ruled as follows:

> "A taking of property occurs when a government regulation eliminates the economic viability of property to its owner. *Lucas v. South Carolina Coastal Council* (1992), 505 U.S. 1003. . . . When a taking occurs, the government must pay just compensation to the property owner. U.S. Const., Amend V. Just compensation is required even if the taking is a temporary one. *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles* (1987) 482 U.S. 304." (App. 30)

The California Superior Court Judge Crispo further explained the basis of his finding of a regulatory taking by writing:

> "**Regulatory taking:** The denial of Ali's application for a demolition permit pursuant to the City's Rent Stabilization Ordinance ("RSO") constituted a regulatory taking. A regulatory taking occurs when an ordinance 'does not substantially advance legitimate state interests or

> denies an owner economically viable use of his land.' *Agins v. City of Tiburon* (1980) 447 U.S. 255, 260.
>
> The City's initial designation of the Ferraro as an SRO was erroneous. The SRO ordinance prevented the immediate demolition of the Ferraro." (App. 31)

The City appealed this decision to the California Court of Appeal. (App. 119-123). The Court of Appeal rejected the City's arguments. The California Court of Appeal made it clear that its decision would be based on its understanding of this Court's decisions by stating:

> "In *First Lutheran Church v. Los Angeles County* (1987) 482 U.S. 304, (hereafter *First English*) the Supreme Court indicated that a governmental regulation which deprives a landowner of all economically viable use of the land may constitute a regulatory taking of property which requires just compensation under federal constitutional law. (*Id.* at pp. 312-313.) This is consistent with the United States Supreme Court's pronouncements both before and after First English. (See *Agins v. City of Tiburon* (1980) 447 U.S. 255, 260, (citation) . . . " (App. 6)

The California Court of Appeal then explained its understanding of First English by stating as follows:

> The court in *First English* indicated two circumstances in which such a temporary denial of all use of the property would not require compensation: (1) the denial of use was required for public safety reasons (*citation*), or (2) the temporary deprivation was merely a normal delay in the permissible regulation of development. (citation.)" (App. 6-7)

After discussing this precedent and cases applying it, the California Court of Appeal held that:

> "[T]he delay in demolition caused by the erroneous enforcement of the SRO ordinance despite

> the prohibitions of the Ellis Act was not a "normal" delay in the development process. Because the delay temporarily deprived Ali of all use of his property and was not a normal delay in the development process, it was a temporary regulatory taking which required compensation under First English. Judge Crispo correctly awarded a judgment in favor of Ali in inverse condemnation." (App. 14)

A petition for review was filed with the California Supreme Court. App. J. The City's Petition for Review to the California Supreme Court explicitly tendered the following questions:

> "Is a landowner entitled to damages for a regulatory taking based on a non-final decision reversed by the government agency through its own development approval process?
>
> May a landowner pursue damages for a regulatory taking without first succeeding in setting aside the government agency's decision through a judicial determination in a mandamus proceeding?
>
> Can an action of a government agency that exceeds its statutory authority be a compensable taking?" (App. 56-57)

The order of the California Supreme Court denying the Petition for Review was entered on March 29, 2000. (App. F)

Although worded differently the questions now before the Court raised the same federal issue, i.e., has there been a temporary regulatory taking for which just compensation must be paid?

II

JUDGE CRISPO'S FINDINGS OF FACT ARE RELEVANT TO RESPONDENT'S REGULATORY TAKINGS THEORY

It is undisputed by the parties that there was a delay in the issuance of a demolition permit between January 1989 and August 1990. The development approval process in this case centered around a dispute over the correct classification of the Ferraro Hotel. Once Ali demonstrated that there had been a misclassification by exhausting his administrative remedies, the City gave him the requested permit.

At trial, Judge Crispo, as the trier of fact, found as an historical fact that this delay was due to a misclassification of the property. Judge Crispo based his finding of a regulatory taking solely on the fact that the City had mistakenly misclassified the hotel. Judge Crispo, in ruling on Ali's cause of action for inverse condemnation found that: "The City's initial designation of the Ferraro as an SRO was erroneous. The SRO ordinance prevented the immediate demolition of the Ferraro. . . . " (App. 31).

He did not criticize the City for acting in bad faith or in an arbitrary manner. Indeed, Judge Crispo made the following findings about the character of the City's actions:

> "[T]he City's actions were not oppressive nor do they shock the conscience. While the actions of the City's employees were negligently performed, there is no credible evidence that they deliberately sought to deprive Mr. Ali of his due process rights. On the contrary, the court finds that they acted in good faith. Finally, the City's action, though misguided, was an attempt to further legitimate interests in protecting both its zoning integrity and the public." (App. 24-25)

Despite these findings of fact the California Court of Appeal held that " . . . the position taken by the City was

so unreasonable from a legal standpoint as to be arbitrary, not in furtherance of any legitimate governmental objective, and for no other purpose than to delay any development other than for an SRO hotel. Therefore the delay in demolition of the hotel was a temporary regulatory taking requiring compensation." (internal quotes omitted) (App. 13)

This finding is in direct conflict with that of the trier of fact. It appears to be the view of the California Court of Appeal that the obligation to provide just compensation can be triggered by governmental error even in the absence of any due process violations. Judge Crispo expressly found that the City acted in good faith in an attempt to protect both its zoning integrity and the public. Neither policy nor precedent support a finding that just compensation must be paid under such circumstances.

CONCLUSION

For these and all the above reasons the petition for a writ of certiorari should be granted.

Respectfully submitted,

JAMES K. HAHN, City Attorney
CLAUDIA MCGEE HENRY,
Sr. Assistant City Attorney
MICHAEL L. KLEKNER,
Deputy City Attorney

Attorneys for Petitioner